

Exhibit C

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO
3
4
5 In Re:)
6 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA TITLE III
7 FOR PUERTO RICO) Case No.
8 as representative of) 17-BK-03283 (LTS)
9 THE COMMONWEALTH OF PUERTO RICO, et. al,)
10 Debtors.)
11)

12 In Re:)
13 THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD) PROMESA Title III
14 FOR PUERTO RICO) Case No.
15 as representative of) 17-BK-03566 (LTS)
16 THE EMPLOYEES RETIREMENT SYSTEM OF THE)
17 GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO,)
18 Debtor.)
19)

20
21 C O N F I D E N T I A L
22 Videotaped Deposition of Patrick Dowd
23

24 Reported by:
25 LORRAINE B. ABATE, CSR, RPR

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2 pricing, my understanding, although it's not my area
3 of responsibility, is that would come from market
4 quotes received by the people doing it.

5 Q. Okay. When did Ocher Rose first become
6 aware of an argument that the ERS bonds were issued
7 without authority?

8 A. It's not something we were aware of or
9 considered until the argument was raised.

10 You would have to remind me when that
11 first was by -- I don't recall whether it was in the
12 Title III case, but whenever that was first raised in
13 litigation against us would have been the time.

14 Q. Does -- well, I'm aware of a pleading
15 that was filed by AAFAF in November 2017 that made
16 the argument that the bonds were issued ultra vires.

17 Do you recall that document?

18 A. I do recall -- I don't recall the
19 specifics of the document, but I recall that, and
20 that time frame is consistent with my recollection.

21 I think that's when -- that's likely
22 when we would have first been aware.

23 Q. But just to be clear, so your testimony
24 is that Ocher Rose did not ever become aware of that
25 argument prior to it being made in a public court

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2 filing?

3 A. That's my recollection.

4 Q. Are you excluding from your answer

5 advice that you may have received from counsel?

6 MR. FOX: Objection. I'm not sure
7 there's a way for him to answer that question
8 yes or no without revealing something about the
9 substance he's received from counsel.

10 MR. BASSETT: Let me ask it more
11 directly.

12 Q. Prior to the point in time in which you
13 learned of the argument based on it being made
14 publicly in the Title III cases, did your counsel
15 ever identify for you the possibility that that
16 argument could be made?

17 (DIR)

18 MR. FOX: I'm going to object and
19 instruct you not to answer on the grounds of
20 privilege.

21 MR. BASSETT: You're going to object to
22 the yes or no question as to whether or not
23 counsel ever advised Ocher Rose as to the
24 potential for that argument?

25 MR. FOX: Yes. You're asking about the

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2 content of legal advice provided by counsel.

3 MR. BASSETT: We take issue with that
4 assertion of privilege in this context, and
5 given the affirmative defense that you have
6 raised that Ocher Rose did not have notice of
7 the defect in the validity of the bonds prior to
8 purchasing the bonds, we'll take that up with
9 the Court as necessary, and we will reserve the
10 right to continue this deposition on that basis.

11 MR. FOX: I -- obviously, we disagree
12 with just about everything you just said,
13 including the characterization of the notice
14 defense as an affirmative defense.

15 Q. Did anyone other than counsel inform
16 Ocher Rose of the possibility that someone might make
17 the ultra vires argument prior to the time that you
18 saw it disclosed in a public court filing?

19 A. Not that I can recall.

20 (Dowd Exhibit 6, Spanish Version
21 Document, marked for identification, as of this
22 date.)

23 Q. Mr. Dowd, I've handed you a document
24 that's been marked as Dowd Exhibit 6. Take your time
25 to review it and then once you have, please let me

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2 I think that the set of facts that I
3 determined we should seek advice on were clear from,
4 you know, at an early stage from the official
5 statement and from statements on the sort of parent
6 government's financial situation.

7 MR. BASSETT: Counsel, with respect to
8 the names of the issuers, can you help me
9 understand why, what's the privilege claim?

10 MR. FOX: Because the fact that they
11 sought legal advice as to the validity of bonds
12 by these particular issuers is a privileged
13 request for legal advice. It's core
14 attorney-client privilege.

15 MR. BASSETT: So if a privilege log were
16 produced that contained, for example, an e-mail
17 that had been sent in connection with that other
18 bond issuance to counsel, what would the subject
19 matter box say?

20 MR. FOX: That's a very hypothetical
21 question, but it would not reveal the content of
22 the request. So it would not reveal that it was
23 a request for whether the bonds were valid.
24 That's the content of the request for legal
25 advice.

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2 MR. BASSETT: In asking for whether or
3 not advice occurred regarding the validity of
4 the bonds, I am asking for the topic of the
5 legal advice, not the content of the legal
6 advice. Are you still instructing the witness
7 not to answer?

8 MR. FOX: It's the -- it is the content
9 of the advice that was requested. It's -- the
10 privilege covers both the request and the advice
11 that's been rendered.

12 MR. BASSETT: I disagree and reserve
13 rights on that issue.

14 MR. PAPEZ: Also I'll note for the
15 record that we're talking about not even ERS
16 bonds here. I mean, you're asking us to waive
17 privilege over something that we're claiming
18 privilege on for different bonds, not held by
19 the actual party here, which is Ocher Rose.

20 So I mean, we're getting pretty far
21 afield. It's five o'clock. I think it's time
22 to move off from this subject.

23 MR. BASSETT: It is relevant. I'm not
24 asking for any privilege waiver. I'm only
25 asking for the topic of the advice sought from

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counsel. And obviously, we don't agree. We'll

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reserve our rights and take it up with the Court

4

if we deem necessary.

5

MR. PAPEZ: Fair enough.

6

BY MR. BASSETT:

7

Q. Can I go back to -- sorry, Dowd

8

Exhibit 4. If you could please take another look at

9

that.

10

The first date that is referred to here

11

is [REDACTED] Is that the first date on which

12

Ocher Rose ever acquired ERS bonds?

13

MR. FOX: Objection to form.

14

Q. Let me help you. Let me help you maybe

15

understand where I'm going with this.

16

A. Okay.

17

Q. If you go to page 5 of the document,

18

which is part of the preliminary --

19

A. Page 5 of this?

20

Q. It's labelled page 5 at the bottom. I

21

believe I gave it to you.

22

A. Of which document?

23

Q. I'm sorry, of Dowd Exhibit 4.

24

A. I don't know that I -- this. Okay.

25

Q. The second full paragraph on that page

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2 been -- my best guess is between a month and two ago.

3 Q. And that was the same time at which you
4 learned that Mr. Daniels would be designated for the
5 other topics?

6 A. Correct.

7 Q. That includes 16 and 17 for Mr. Daniels?

8 A. Yes.

9 MR. BASSETT: No further questions at
10 this time.

11 There were a number of issues that came
12 up during the course of today's deposition that
13 have led us to believe we are not getting the
14 testimony that we are entitled to receive, but
15 because we take issue with several of the
16 objections that were made on the grounds of the
17 attorney-client privilege and instructions not
18 to answer, including with respect to the other
19 investments on which Mr. Dowd sought advice and
20 the instruction not to reveal the names of those
21 investments.

22 We also take issue with the instruction
23 not to answer whether or not Jones Day or other
24 counsel has ever raised or otherwise identified
25 the ultra vires issue to Ocher Rose.

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2 And additionally, we take issue with the
3 preparedness of the deponents today on a variety
4 of topics including -- and we also take issue
5 with the timeliness of the disclosure to the
6 committee and the other parties as to which
7 witnesses would be designated on each topics.

8 For all those reasons, we reserve our
9 rights to go to the Court. We reserve the right
10 to keep the deposition open. As far as we are
11 concerned, the deposition remains open.

12 MR. FOX: So we object to all of that.
13 We think you're asking questions that go to the
14 core of the attorney-client privilege, including
15 the substance of legal advice requested and the
16 substance of legal advice received.

17 We think -- we identified to you that
18 Mr. Dowd and Mr. Daniels would be splitting the
19 topics as designees quite some time ago. We
20 received no question from you, no indication of
21 any confusion as to which topics were which. We
22 identified to you this morning, before we
23 started, specifically which topics each would
24 handle. There was no objection from anyone at
25 that time.